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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 793

MARY HAMILTON

v.

ALABAMA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

NO. 793

MARY HAMILTON,
Petitioner

v.

ALABAMA,
Respondent

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

OPINION BELOW

The opinion of the Supreme Court of Alabama of September 26, 1963, is reported at 156 So.2d 926 and is set forth in the appendix, infra p. 15. No opinion was given by the Circuit Court of Etowah County, Alabama.

JURISDICTION

The Supreme Court of Alabama entered its judgment on September 26, 1963 (R. 8), and denied rehearing on October 31, 1963 (R. 14). The petitioner attempts to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3), alleging that petitioner has asserted below and here the deprivation of rights, privileges, and immunities secured by the Constitution of the United States.

The respondent would show unto this Court that no federal question was properly presented for review to the trial court

or to the Supreme Court of Alabama and that this Court has no jurisdiction.

QUESTIONS PRESENTED

Petitioner seeks to present the following questions:

Whether the petitioner was denied rights protected by the due process and equal protection clauses of the Fourteenth Amendment when she was summarily fined and imprisoned for contempt of court in the following circumstances:

1. Petitioner, a Negro, was a witness in her own behalf at a habeas corpus hearing in an Alabama court. Throughout the hearing the solicitor representing the State adhered to the custom of addressing all Negro witnesses by their first names, declining to call them "Mr. or "Miss", and was sustained in this conduct by the trial judge. Petitioner was held in contempt of court when the prosecutor insisted upon addressing her as "Mary" and she said that she would not answer his questions until he addressed her "correctly."

2. The trial judge ordered petitioner to answer, and upon her statement that she would not answer until she was "addressed correctly," immediately and summarily held her in contempt and sentenced her to a fine and imprisonment, without affording her notice of the contempt charge or a hearing.

Questions of jurisdiction now presented by respondent are whether the Supreme Court of the United States will grant the petition for writ of certiorari where:

1. One of the Federal questions sought to be presented by the petitioner was not raised in the trial court and was not decided by the Supreme Court of the State of Alabama; and

2. The other Federal question sought to be presented by

the petitioner was not raised in the trial court or in the Supreme Court of Alabama, the petitioner having first urged this question in her petition to this Court for writ of certiorari to the State court.

STATEMENT

Respondent adopts the statement presented by the petitioner (page 4 of the petition) with the following additional information:

The record in this case does not include any transcript from the trial court.[A] The only matter presented to the Supreme Court of Alabama for its possible review is two short excerpts from the lower court record used as a part of the petition filed with the said Court in this case.[B]

Although petitioner alleges that certain witnesses in the lower court were Negroes, that part of the record of the proceedings in the trial court presented for review does not show that the witnesses involved, including petitioner, were of such racial descent.[C]

ARGUMENT
Objections to the Jurisdiction

The petitioner fails to show that there was any Federal question presented to the trial court in the proceedings in

A. The **entire** record in the Supreme Court of Alabama was filed in this court by the petitioner and consists of:
   1) Petition for writ of certiorari to the circuit court of the Sixteenth Judicial Circuit of Alabama, Etowah County, Ala.;
   2) Order of Submission;
   3) Opinion;
   4) Judgment;
   5) Application for stay of execution;
   6) Order on application for stay;
   7) Application for Rehearing; and
   8) Order Overruling Rehearing.

B. See Appendix, infra, p. 10, for copy of petition in State Supreme Court.

C. See Appendix, infra, pp. 11 and 13.

the instant case (R. 2 & 3). In fact, no objection at all was interposed by counsel for petitioner during the time when the petitioner was on the witness stand being cross-examined by the State Solicitor. This period of questioning ended with petitioner's conviction and sentence for contempt committed in the presence of the Court (R. 2).

The Alabama Supreme Court had no Federal question which it could decide in this cause because no such question was presented to the lower court. In *Fuller v. State*, 269 Ala. 312, 113 So.2d 153, cert. den. 361 U.S. 936, the appellant attempted to raise a Federal question not presented to the trial court. In response to this attempt, the Supreme Court of Alabama said:

> "But appellant contends that because of the remarks of the trial court and the results of such remarks, he has been denied a fair trial by an impartial jury as guaranteed by the Constitution of the State of Alabama and the United States. But even constitutional rights have to be raised seasonably in the trial court. Gibbs v. State, 7 Ala.App. 30, 60 So. 999; Scott v. State, 247 Ala. 62, 22 So.2d 529, and Ball v. State, 252 Ala. 686, 42 So.2d 626, 631, certiorari denied 339 U.S. 929, 70 S.Ct. 625, 94 L.Ed. 1350."

The Alabama Supreme Court is committed to the proposition that it will not consider on certiorari any matter not shown on the record. *Ex parte Pope*, 26 Ala.App. 282, 158 So. 767; *Ex parte Woodward Iron Co.*, 211 Ala. 74, 99 So. 97.

Where the record presented to the United States Supreme Court does not show that state procedural requirements are observed, that Court will decline to exercise jurisdiction when the highest state court is completely silent on the federal question sought to be presented. *Mutual Life Insurance Co. v. McGrew*, 188 U.S. 291; *Jacobi v. Alabama*,

187 U.S. 133. In such circumstances the court assumes, unless it can be shown otherwise, that the silence is due to the procedural deficiency. *Bailey v. Anderson*, 326 U.S. 203.

The foregoing argument is directly applicable to the first question petitioner seeks to present. Petitioner's second question is even more vulnerable to the same argument. Petitioner does not allege or show unto this Court that the second question was properly raised in either the trial court or the Alabama Supreme Court and it appears to the respondent that this question was raised in neither court.

The respondent does not believe that the Supreme Court of the United States will take jurisdiction of the petition herein filed since the questions sought to be presented were neither brought to the attention of the trial court or decided by the state court of review. Additional cases on this point are *Hulbert v. California*, 202 U.S. 275; *Brown v. Massachusetts*, 144 U.S. 573; *Edelman v. California*, 344 U.S. 356.

There is no Important Question of Federal Law

Counsel for respondent does not believe that the manner of addressing individual witnesses in a court of law has been the subject of review by this Court in the past. In this case, if the jurisdictional facts could be shown, the federal question is not substantial, is not important, and is frivolous. *Zucht v. King*, 260 U.S. 174; *Sugarman v. United States*, 249 U.S. 182; *Jacobson v. Massachusetts*, 197 U.S. 11.

It would appear to be an imposition upon this Court to request that it concern itself with an attempt to inforce social amenities and rules of etiquette. Amy Vanderbilt's Complete Book of Etiquette (1952), p. 216, 217; Emily Post, Etiquette, The Blue Book of Social Usage (1955), p. 26, 27.

The Decision Below is Clearly Correct

The Supreme Court of Alabama entered the only possible decision in this case. Under the circumstances there was no objection of petitioner to the action of the trial court for the Supreme Court of Alabama to rule upon and there was state statutory law upon which to base the contempt conviction. Title 13, § 2, Code of Alabama 1940, Recompiled 1958.

It has long been the law in Alabama that when contempt is committed in the face of the court the offender may be instantly apprehended and punished within limits prescribed by law, without any further proof or examination. *Hancock v. Bell*, 274 Ala. 390, 149 So.2d 842; *Coleman v. Roberts*, 113 Ala. 323, 21 So. 449, 36 LRA 84, 59 Am.St. Rep. 111; *Ex parte Morris*, 252 Ala. 551, 42 So.2d 17.

The United States Supreme Court has upheld federal courts in the exercise of power to punish for contempt where a witness refused to answer a question. In *Yates v. United States*, 355 U.S. 66, Justice Clark, in delivering the opinion of the Court said:

> "The summary contempt power in the federal courts, '. . . . although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them.' Ex parte Terry, 128 U.S. 289, 313, 32 L.ed 405, 411, 9 S.Ct 77 (1888) . . .
>
> * * *
>
> "A witness, of course, cannot 'pick and choose' the questions to which an answer will be given. The man-

agement of the trial rests with the judge and no party can be permitted to usurp that function. See United States v Gates (CA2d NY) 176 F2d 78, 80. . ."

This language from *Brown v. United States*, 356 US 148, is of particular interest:

". . . The court (except insofar as it is constitutionally limited), not a voluntary witness, defines the testimonial duty. See Judge Learned Hand in United States v Appel (DC NY) 211 F 495.

"Such has been the unquestioned law in the federal judicial system time out of mind. It has been acted upon in the lower courts and this Court. Whatever differences the potentially drastic power of courts to punish for contempt may have evoked, a doubt has never been uttered that stubbon disobedience of the duty to answer relevant inquiries in a judicial proceeding brings into force the power of the federal courts to punish for contempt. Trial courts no doubt must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice. It is no less important for this Court to use self-restraint in the exercise of its ultimate power to find that a trial court has gone beyond the area in which it can properly punish for contempt. We are not justified in sliding from mere disagreement with the way in which a trial court has dealt with a particular matter, such as petitioner's conduct in the present case, into a condemnation of the court's action as an abuse of discretion."

The Decision of the State Court is Based on Adequate State Grounds

An examination of the opinion in this case rendered by the State Supreme Court does not indicate that the State Court considered any federal question as having a bearing on this case. A State statute is cited, Title 13, Section 2, Code of Alabama 1940, Recompiled 1958, for authority that the lower

court had sufficient power to punish the petitioner for contempt. State cases are cited as authority for the statement that the lower court's ruling should not be overturned. The United States Supreme Court case cited in the State court opinion is used merely as authority for the statement about the duty of a witness to give testimony in a court of law. In no way does the State court allude to any federal question in reaching its decision.

Where the petitioner does not show that a federal question was decided by the State Supreme Court, this Court will deny jurisdiction. *Black v. Cutter Laboratories*, 351 U.S. 292. For a compilation of cases on this point see the annotation at 100 United States Supreme Court Reports, Lawyers Edition, 1203.

The United States Supreme Court has said that it will not proceed with review of a State court judgment until the fact that the judgment does not rest on adequate and independent grounds in State law appears of record. *Herb v. Pitcairn*, 324 U.S. 117; *Stembridge v. Georgia*, 343 U.S. 541.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

7th Div. 621

IN THE SUPREME COURT OF ALABAMA

SEVENTH DIVISION

Ex parte MARY HAMILTON

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF ALABAMA, ETOWAH COUNTY, ALABAMA

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IN THE SUPREME COURT OF ALABAMA

SEVENTH DIVISION

No. 621

Ex parte MARY HAMILTON,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF ALABAMA, ETOWAH COUNTY, ALABAMA

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUDGES OF THE SUPREME COURT OF ALABAMA

Comes the petitioner, Mary Hamilton, and respectfully petitions this Honorable Court to review, determine and set aside as null and void her conviction of contempt of court entered against her on June 25, 1963. During the course of proceedings on petition for writ of habeas corpus in *Ex Parte Marvin Robinson, et al.* — petitioner herein being also a petitioner in that cause — held before the Circuit Court for the Sixteenth Judicial Circuit of Alabama, Etowah County, Alabama, the Honorable A. B. Cunningham presiding, petitioner was convicted of a contempt alleged to have been committed in the presence of the court and sentenced to five days in the county jail and a fine of fifty ($50.) dollars. Petitioner has served her sentence of five days but was admitted to bond for the unexpired portion of her sentence in lieu of payment of the fine which she was unable to pay. Petitioner, a Negro citizen of the United States at the time of her conviction, was a witness on the stand in her own behalf. The circumstances from which petitioner's conviction resulted were:

On June 24, 1963, a petition for writ of habeas corpus was presented to the Circuit Court of Etowah County, the Hon-

orable A. B. Cunningham, on behalf of the petitioner and others to secure her release from the city jail of Gadsden, Alabama in Etowah County and the release of other persons from various places of confinement within the county. Hearing on the petition for writ of habeas corpus commenced on June 25, 1963. After presentation of the State's case, petitioners presented evidence designed to show that the confinement and detention of the petitioner herein and others was unwarranted, illegal and unjustified. During the course of cross-examination of petitioners' witnesses, counsel for the State persisted in addressing the witnesses — Negro citizens of the United States — by their first or Christian names, over the objections of petitioners' counsel. Attached hereto as an exhibit [see respondents note below], is that portion of the transcript of the proceedings which shows the persistence by counsel for the State in this practice and the objections made to this practice by petitioners' counsel.

Petitioner herein, Mary Hamilton, was called to the stand. After direct examination the attorney for the State, Circuit Solicitor Rayburn, commenced cross-examination. The following colloquy then occurred:

CROSS EXAMINATION BY SOLICITOR RAYBURN:

Q What is your name, please?

A Miss Mary Hamilton.

Q Mary, I believe — you were arrested — who were you arrested by?

A My name is Miss Hamilton. Please address me correctly.

Q. Who were you arrested by, Mary?

A I will not answer a question —

[Note: No such exhibit is a part of the record in the State Supreme Court.]

BY ATTORNEY AMAKER: The witness's name is Miss Hamilton.

A — your question until I am addressed correctly.

THE COURT: Answer the question.

THE WITNESS: I will not answer them unless I am addressed correctly.

THE COURT: You are in contempt of court —

ATTORNEY CONLEY: Your Honor — your Honor —

THE COURT: You are in contempt of this court, and you are sentenced to five days in jail and a fifty dollar fine. (T. 16-17)

Petitioner avers that her conviction of contempt in these circumstances was erroneous, unjustified, illegal, null and void, contrary to the decisions of this Court and violated her right to the equal protection of the laws and due process of law guaranteed under the Fourteenth Amendment to the Constitution of the United States.

During the course of the proceedings in a court of law in which counsel for the petitioners addressed *all* witnesses by their surnames and counsel for the State addressed *all* witnesses by their surnames *save* those witnesses who were Negro, the failure of the trial judge to deter the State's attorneys from continuing this practice was an obvious and blatant denial of the Negro witnesses' right to equal protection of the law. As that portion of the transcript of the proceedings attached hereto [see respondents note on page 11] demonstrates, counsel for the petitioners, prior to the conviction of petitioner, objected strenuously to the court's allowing this unconstitutional practice to persist:

Q (By Solicitor Rayburn) And you were present then, Robert, when a large crowd was present here —

ATTORNEY AMAKER: Just a second, your Honor, may I object to the form of the question?

Q — here at the Court House?

ATTORNEY AMAKER: We have set (sic) here and let this go on. This witness, as the record will show, is Mr. Robert Henry, and he is in a court of law under examination by Counsel admitted to the bar of this state, and he has — and he can be addressed by his surname, and not by his Christian name.

THE COURT: I am not going to tell a lawyer how to address a witness. Go ahead.

ATTORNEY AMAKER: We object.

THE COURT: I never have yet, and I don't intend to start it now.

ATTORNEY AMAKER: We object.

(T. 3-4)

It is manifest, therefore, that the action of the court was arbitrary and under the circumstances petitioner had every right to refuse to answer any questions put to her until she was properly addressed, i.e., addressed as was everyone else except Negroes who were witnesses in the proceeding. Her conviction of contempt under these circumstances was clearly erroneous and in violation of both the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, petitioner respectfully prays that this Honorable Court review and determine this cause and that upon such review and determination her conviction and every part thereof be reversed and that your petitioner may have such other or further relief or remedy in the premises as this Court may deem appropriate and just.

/s/ *Oscar W. Adams, Jr.*

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Attorneys for Petitioner

September 26, 1963

THE STATE OF ALABAMA

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1963

7 Div. 621

Ex parte MARY HAMILTON

PETITION FOR WRIT OF CERTIORARI TO ETOWAH CIRCUIT COURT

MERRILL, *Justice*.

Petition for writ of certiorari to the Circuit Court of Etowah County to review a conviction of contempt of court.

Petitioner, Mary Hamilton, filed a petition for writ of habeas corpus in the Circuit Court of Etowah County. She was a witness in her own behalf and on cross examination she refused to answer the third question propounded to her. The trial court adjudged her to be in contempt and sentenced her to serve five days in jail and fined her $50. She has served the jail sentence.

The cross examination of petitioner was as follows:

"Q. What is your name, please? A. Miss Mary Hamilton.

Q. Mary, I believe—you were arrested—who were you arrested by? A. My name is Miss Hamilton. Please address me correctly.

Q. Who were you arrested by, Mary? A. I will not answer a question—

By Attorney Amaker: The witness's name is Miss Hamilton.

A. —your question until I am addressed correctly.

The Court: Answer the question.

The Witness: I will not answer them unless I am addressed correctly.

The Court: You are in contempt of court—

Attorney Conley: Your Honor—your Honor—

The Court: You are in contempt of this court, and you are sentenced to five days in jail and a fifty dollar fine."

The power of the several courts to inflict summary punishment upon a witness for refusing to answer a lawful question is specifically authorized in Tit. 13, §2, Code 1940.

"It is every man's duty to give testimony before a duly constituted tribunal unless he invokes some valid legal exemption in withholding it." *Ullmann v. United States*, 350 U. S. 422, 76 S. Ct. 497, 100 L. Ed. 511.

Here, the question was a lawful one and the witness invoked no valid legal exemption to support her refusal to answer it.

The record conclusively shows that petitioner's name is Mary Hamilton, not Miss Mary Hamilton.

Many witnesses are addressed by various titles, but one's own name is an acceptable appellation at law. This practice is almost universal in the written opinions of courts.

In the cross examination of witnesses, a wide latitude is allowed resting in the sound discretion of the trial court and unless the discretion is grossly abused, the ruling of the court will not be overturned. *Blount County v. Campbell*, 268 Ala. 548, 109 So. 2d 678; *Kerria v. State*, 254 Ala.

19, 48 So. 2d 204. We hold that the
buse its discretion and the record su
unishment inflicted.

PETITION FOR WRIT OF CERTIORARI DE

Lawson, Goodwyn and Harwood, JJ.,

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concur.